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**Court : Allahabad**

**Decided On : Sep-25-1998**

**Reported in : 1999(1)AWC77**

**Judge : D.P. Mohapatra, C.J. and ;R.R.K. Trivedi, J.**

**Acts : [National Security Act, 1980](#) - Sections 3(2); Indian Penal Code (IPC) - Sections 147, 148, 149, 302, 307, 387, 504 and 506; Code of Criminal Procedure (CrPC) - Sections 161; Uttar Pradesh Control of Goondas Act; U.P.D. Act - Sections 12 and 14; Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act - Sections 2, 3 and 4; [Constitution of India](#) - Article 22(5)**

**Appeal No. : Habeas Corpus Writ Petition Nos. 10594 and 10596 of 1998**

**Appellant : Ashok Kumar**

**Respondent : District Magistrate, Jalaun and Others**

**Advocate for Def. : A.G.A. and ;S.C. Mishra, Adv.**

**Advocate for Pet/Ap. : Tej Pal, Adv.**

**Judgement :**

**R.R.K. Trivedi, J.**

1. In both the aforesaid petitions, questions of facts and law involved are similar and both the petitions may be decided by a common order against which learned counsel for the parties have no objection. Petition No. 10594 of 1998 shall be the leading case.

2. Both the petitioners aggrieved by their preventive detention have questioned the legality of the orders dated 29.12.1997 passed by respondent No. 1, under Section 3(2) of the [National Security Act, 1980](#) (hereinafter referred to as the Act). Copies of the orders have been filed as Annexure-A1 in both the petitions. Along with the order of detention, petitioners were also served the grounds on which basis respondent No. 1 formed his subjective satisfaction for passing the impugned orders. Except for a slight variation in respect of detenu Shankar Singh the grounds stated are also similar. In the grounds it has been stated that in view of the election of the students' union of Mahatma Gandhi Degree College, Orai district Jalaun, scheduled to be held on 25.11.1997, 1/2 Section of P.A.C. and civil police was deployed in the college premises to maintain law and order. On 25.11.1997, at about 11.30 a.m., both the petitioners along with their other companions indiscriminately fired at Satendra Tripathi, a student of M. A. Part 1 who was a candidate for the post of President of the Union and killed him at a crowded public place in presence of the P.A.C. and police force. Petitioners also threatened the persons present there from becoming witness of the crime otherwise they shall also be killed. The P.A.C. and police force present there chased the petitioners and their companions but they resorted to firing and escaped. The P.A.C. and police force could not fire at them for the sake of safety of the crowd and persons of the public present there.

3. That on account of the daring act of the petitioners, an atmosphere of commotion and fear prevailed there. People ran helter-skelter. On account of the fear, shops were closed, people went inside their houses and the public order was completely disturbed. In order to remove the fear from the minds of the residents of the locality and students of the college, additional police force consisting of three platoons of P.A.C. and other civil police force was summoned from the rural area and deployed in the college campus. A report of this occurrence was lodged on the same day at about 12.20 p.m. by Mahendra Tripathi, brother of the deceased.

Case was registered at police station Kotwali, Orai, as case crime No. 1057 of 1997, under Section 147/148/149/302. I.P.C.

4. In view of the daring and heinous murder committed by the petitioners and their companions, the election of the Students Union of the college had to be postponed for a period of one month.

5. Eye-witnesses of the aforesaid occurrence Ram Singh. Manoj Budhauillya and Riyasat Khan were examined under Section 161, Cr. P.C. by the Investigating Officer. The aforesaid witnesses in their statements have stated that the public order in the locality was badly disturbed and people ran helter-skelter. Complainant Mahendra Tripathi in his statement under Section 161, Cr. P.C. named both the petitioners and also named Saryu Prasad and Bablu Srivaslava. He further stated that on account of death of his brother in the above occurrence he was grieved and nervous hence he could not name accused Nausher, Saryu Prasad and Bablu Srivastava in the F.I.R. On his confidence being restored, he stated true facts before the investigating Officer. From the post-mortem report also. It appears that Satendara Tripathi died on account of injuries caused by fire-arm. The Investigating Officer visited the spot immediately after the occurrence and found that the shops and houses were closed and there was complete lull in the locality. Newspaper 'Dainik Jagran' and local newspaper 'Soch Samajh' published on 26.11.1997, reported about the occurrence of the brutal murder in detail.

6. In the grounds, it was further stated that the petitioners and their companions by committing the aforesaid daring and brutal murder inside the college campus, in presence of P.A.C. and police force disturbed the public order from which it was clear that the petitioners and their companions were hard-core criminals and did not care for the security arrangements of the P.A.C. and the police.

7. On 27.11.1997. petitioners surrendered in other case after getting their bail cancelled and since then they are in judicial custody in District Jail. Oral and they have made application for the grant of bail and are making hectic efforts to secure release from Jail. There is every possibility that if the petitioners are released on bail, they will again indulge in such daring activities to disturb the public order. It is

also being stated that petitioners are dangerous criminals of daring nature. Since 1974 twenty six criminal cases have been registered against them. In some of the cases petitioners were discharged as witnesses turned hostile on account of fear and terror but nine criminal cases are still pending in different Courts against petitioner Ashok Kumar Gupta. He was also externed from the district under the U. P. Control of Goondas Act. A complete criminal history was supplied to the petitioner.

8. On 15.7.1991, at about 10.45 a.m., Ashok Kumar Gupta along with his other companions attacked Jitendra Kumar Vyas, Former, President of the Students Union in a crowded public place, in Mohalla Tulsi Nagar. in broad day light, and injured him. A criminal case was registered as Case Crime No. 541 of 1991, under Section 147/148/149/ 307/504/506. I.P.C. at police station Kotwali, Orai. After investigation a charge-sheet has been filed in Court and the case is pending.

9. In the grounds served along with the order of detention on Shankar Singh. petitioner of Habeas Corpus Petition No. 10596 of 1998 different grounds were mentioned in paragraphs 14. 15 and 16. It has been stated that on 12.4.1997, at about 11.30 a.m. he and his companions chased Lalloo Ram alias Ramakant Dwivedi in public place and murdered him in respect of which a criminal case was registered as Case Crime No. 354 of 1997, under Section 147/148/149/302/504/506. I.P.C. in police station Kotwali. Oral in which after investigation charge-sheet has been submitted in Court and trial is pending. In para 15, it has been stated that petitioner Shankar Singh extracted money under threats in respect of which Case Crime No. 1112 of 1994 under Section 387. I.P.C. and Section 12/14 of the U.P.D. Act was registered in which also after investigation charge-sheet has been filed in Court and the trial is pending. In para. 16, it has been stated that in order to prevent the petitioner from indulging in criminal activities, a Case Crime No. 388 of 1997 under Section 2/3 of the U. P. Gangsters and Anti-Social Activities (Prevention) Act was registered which is still pending.

10. On the aforesaid grounds, the detaining authority felt satisfied that with a view to preventing petitioners from acting in the manner prejudicial to the maintenance

of the public order, it is necessary to detain them. Petitioners have also been informed that they have right to make a representation to the State Government. Advisory Board and the Central Government for revoking the order of detention. Such representations may be submitted through the Superintendent of Jail. The petitioners were also informed that the cases of petitioners shall be referred to the Advisory Board within three weeks and if they wanted personal hearing before the Advisory Board, it should also be claimed specifically in the representation which may be submitted before the matter is referred to the Advisory Board. The aforesaid detention orders were approved on 9.1.1998, under Section 3/4 of the Act by the State Government. Both the petitioners filed representations on 19.1.1998 which were forwarded by the District Magistrate along with his comments to the State Government on 27.1.1998 and were received by the State Government on 28.1.1998. The State Government placed the aforesaid representations along with the comments of the Detaining Authority before the Advisory Board on 29.1.1998. A Copy of the representations along with the comments were also sent to the Secretary. Ministry of Home Affairs. Government of India, New Delhi, on 29.1.98. The representations of the petitioners were examined and were rejected on 29.1.1998. The fact of rejection was communicated to the petitioners on 3.2.1998. The Advisory Board 'heard the petitioners personally on 7.2.1998 and gave its opinion that there was sufficient cause to detain the petitioners. The opinion of the Advisory Board was received on 13.2.1998. After examining the opinion of the Advisory Board orders of detention were confirmed for 12 months on 21.2.1998.

11. Representations of the petitioners were received by the Central Government in the Ministry of Home Affairs on 2.2.1998. On these representations information (i.e.. opinion of the Advisory Board) was required which was called for from the State Government through a wireless message dated 4.2.1998. The required information was received in the Central Government on 28.2.1998. The case was thereafter examined at various stages on 24.2.1998. The Joint Secretary considered the case and put the representations along with the opinion before the Minister of State for Home, Government of India, on 24.2.1998. The representation of petitioner Ashok Kumar Gupta was rejected on 24.4.1998 whereas the representation of petitioner Shankar Singh was rejected on 13.5.1998.

12. Shri Amit Mohan Prasad, the then District Magistrate, respondent No. 1. has himself filed counter-affidavit, Shri R. S. Agarwal. Joint Secretary to the Government of Uttar Pradesh has filed counter-affidavit on behalf of respondent No. 2, Shri Vinod Kumar, Dy. Jailor, District Jail. Oral, has filed counter-affidavit on behalf of respondent No. 3 and Shri Bina Prasad, Under Secretary, Ministry of Home Affairs, Government of India, has filed counter-affidavit on behalf of respondent No. 4.

13. We have heard Shri Tej Pal, learned counsel appearing for petitioners and learned A.G.A. for respondent Nos. 1 to 3 and Shri S. C. Mishra, Additional standing counsel. Central Government, for respondent No. 4. Learned counsel for petitioners has submitted that the occurrence dated 25.11.1997 was on account of long standing enmity between the parties and such occurrence could only affect the law and order and it has nothing to do so far as the public order is concerned. It has been further submitted that the petitioners were already in Jail from 27.11.1997 while the impugned order of detention was passed on 29.12.1997 which was served in Jail on 31.12.1997. There was no material to show that petitioners were likely to be released on bail. In fact the petitioners did not apply for bail at all. The alleged bail application dated 11.12.1997 filed through Ram Kumar Dubey, advocate. Oral was in fact got filed by the police to make out a case. The application was filed in the Court of Chief Judicial Magistrate who had no jurisdiction to grant bail as the case was exclusively triable by the Sessions Court. On knowing this development, petitioners immediately made application on 7.1.1998 in the Court of Chief Judicial Magistrate inviting attention of the Court that, they had never instructed anybody to file this application. Shri Ram Kumar Dubey. advocate, also gave an application on the same day denying that he filed bail application. The alleged application was ultimately rejected. It has been submitted that from all these facts, it is clear that the detaining authority was not made aware of the true facts and the impugned order of detention passed against the petitioners vitiated and is liable to be quashed. Reliance has been placed in the case of Pappoo v. State of Madhya Pradesh, 1997 Cr LJ 4486 (Jab).

14. Lastly, It has been submitted that representations of the petitioners to the Central Government were submitted on 19.1.1998. However, it was rejected on

24.4.1998 in case of petitioner Ashok Kumar Gupta, i.e.. after about 95 days. Representation of petitioner Shankar Singh was rejected on 13.5.1998, i.e.. after 115 days. It is submitted that for the inordinate delay in deciding the representations, there is hardly any explanation and on account of this delay, the continued detention of the petitioners has been rendered illegal and petitioners are liable to be released immediately. Reliance has been placed in case of Raj Bahadur Yadav v. State of U. P. and others. 1997 (35) ACC 33.

15. Learned A. G. A., on the other hand, submitted that from ground Nos. 12, 13 and 14 in case of petitioner Ashok Kumar Gupta and ground Nos. 14, 15 and 16 in case of Shankar Singh, the repetitive tendency on the part of the petitioners that they were indulging in criminal activities which frequently disturbed the public order was fully established and there was sufficient reason for forming subjective satisfaction for respondent No. 1 to pass the impugned order. It has been further submitted that in the present case the place of occurrence was the college premises and the heinous murder was committed in broad day light without having little regard to the security arrangements by deploying P, A. C. and the police force to prevent any kind of disturbance during election of the Students Union. Learned counsel has submitted that activity of such nature committed in presence of police personnel definitely had the potentiality to disturb the public order and even tempo of life of the community. The occurrence took place in a crowded place in presence of so many persons. Learned counsel has placed reliance in case of State of U. P. v. Kamal Kishore Saini, AIR 1988 SC 208 ; Kamla Bai v. Commissioner of Police, Nagpur, 1993 SCC (Cr) 913 and Attorney General for India and others v. Amratlal Prajivandas and others. 1994 SCC (CD 1325).

16. Learned counsel has further submitted that it is not disputed that a bail application was filed on behalf of the petitioners in the Court of Chief Judicial Magistrate. It is difficult to believe that such an application could have been filed at the instance of the police for making out a case for passing the impugned order of detention. There is no material in support of such allegation. The petitioners filed applications and then they and their counsel disowned the same but on such facts the order of detention cannot be challenged. From the grounds it is fully clear that the detaining authority was aware of the fact that petitioners were in detention and

they had applied for bail. The requirements thus laid down by Hon'ble Supreme Court in various cases for passing an order of detention while the detenu was already in custody were fulfilled.

17. With regard to the delay, learned counsel has submitted that so far as the State Government is concerned, the representation of the petitioner was examined promptly and was considered and rejected on 29.1.1998. The Central Government rejected the representations on 25.4.1998 and 13.5.1998. However, for this delay the State Government cannot be blamed in any manner. It has been submitted that so far as the constitutional requirement under Article 22(5) is concerned, it was satisfied on the representations being considered and rejected by the State Governments. In case of Union of India where the delay has occurred, the same standard should not be applied which was acting only under a statutory obligation. The power with regard to the revocation of the order of detention may be similar but it is not the same as the source of power is different. Learned A. G. A. has placed reliance in case of Maru Ram v. Union of India, AIR 1980 SC 214 and State of U. P. v. Shakeel Ahmad, 1996 SCC (Cr) 108.

18. We have thoroughly considered the submissions of the learned counsel for the parties. The first submission of the learned counsel for the petitioners was that the alleged occurrence of 25.11.1997 in which Satendra Dwivedi was murdered was on account of the long standing enmity between the parties and such an offence could at the most be termed a problem of law and order and it has nothing to do with the disturbance of the public order. However, the submission of the learned counsel for the petitioners is not acceptable. Whether an act relates to law and order or to public order depends upon the effect of the act on the life of the community, if the reach and effect and potentiality of the act is such which may disturb or dislocate the even tempo of life of the community, it will be an act which will affect public order. If the facts of the instant case are examined in the light of the aforesaid legal position expressed by Hon'ble Supreme Court in a number of cases time and again, we have no doubt that the action of the petitioners had the potentiality to disturb and dislocate the even tempo of the life of the community. The site of occurrence is of great relevance in such cases. Petitioners and their companions committed the murder of a student who was a candidate in the

elections of the Students Union in broad day light inside the college campus defying the security arrangements. The college premises can be safely termed to be a public place. When the Administration had taken precautionary steps to prevent any kind of unfortunate incident during the election, but ignoring the same a heinous offence is committed, it is bound to affect the morale of the student community and the other persons present there. On account of the incident, election was postponed. The material on record clearly demonstrates that there was commotion and fear and even tempo of life was badly disturbed. In order to restore it, additional police force was summoned from rural areas and it was deployed. Thus, it was not a case concerning law and order alone but its reach and effect crossed limits and disturbed the public order. Thus, we do not find any illegality in the impugned order so far as this ground is concerned.

19. The second submission of the learned counsel for the petitioners was against passing of the impugned order while petitioners were already in judicial custody. It has been argued on the basis of the application filed by the petitioners on 7.1.1998 raising a dispute that the bail application was not filed at their instance and instructions but it was filed when the impugned detention order was already passed against the petitioners. This fact is borne out from the record that the application for bail was filed in the Court of the Chief Judicial Magistrate on 11.12.1997. The detention order was passed on 29.12.1997. Thus, the detaining authority could be made aware of the facts prevailing on that day. The impugned order could not be assailed on the basis of the subsequent developments made on the basis of the application of the petitioners filed on 7.1.1998. Hon'ble Supreme Court in case of Veeramani v. State of Tamil Nadu, JT 1994 (1) SC 350, after examining several cases decided by Hon'ble Supreme Court held as under :

'From the catena of decisions of this Court it is clear that even in case of a person in custody, a detention order can validly be passed if the authority passing the order is aware of the fact that he is actually in custody, if he has reason to believe on the basis of the reliable material that there is a possibility of his being released on bail and that on being so released, the detenu would. In all probabilities, indulge in prejudicial activities and if the authority passes an order after recording his satisfaction the same cannot be struck down.'

20. Thus in the instant case, the detaining authority on the basis of material could be satisfied that petitioners were making effort to get their release on bail. There is also material on record on which basis there were cogent reasons for passing the impugned order against the petitioners. They were involved in large number of cases which was indicative of their having a repetitive tendency of frequently indulging in acts having the potentiality to disturb the public order and even tempo of the life of the community. Thus the second submission made by the learned counsel for the petitioners has also no substance.

21. The third and last submission of the learned counsel for the petitioners is regarding the delay in deciding the representations of petitioners. A Full Bench of this Court in case of Raj Bahadur Yadav v. State of U, P. (supra) after examining various cases stated the legal position in para 17 in the following words :

'Coming to the question of delay in disposing of the detenu's representation, the position is clear that the Advisory Board, the appropriate Government and the Central Government are required to act with promptitude and reasonable dispatch in dealing with the representation of the detenu and to consider whether his further detention is legal. Inordinate and unexplained delay on the part of any of the authorities in dealing with the matter will render further detention of the detenu illegal.'

22. In the instant case, it is not disputed that the representation was filed by the petitioners on 19.1.1998 which was received by the Central Government in the Ministry of Home Affairs on 2.2.1998. Some further information was sought from the State Government on 4. 2. 1998 which was received on 20. 2. 1998 but the representation could be rejected on 24.4.1998. Thus, there was a delay of more than two months in deciding the representation. In para 7 of the counter-affidavit filed by Shri Bina Prasad, the explanation given for this delay is as under :

\* \* \* \* The Joint Secretary considered the case and with his comments put up the same before the Minister of State for Home Government of India on 24.2.98. However, as PS to MOS (H) informed that Minister of State for Home is not likely to return before the formation of new Government the file had to be kept pending till either the Minister returned or his successor assumed his charge. The file was

subsequently put up to Under Secretary on 25.3.98 after the new Home Minister had assumed office, who considered the same and put up the case to Deputy Secretary on 25.3.98 who carefully considered the same and with his comments put up the same before the Joint Secretary, Ministry of Home Affairs on 9.4.98. The Joint Secretary considered the case and with his comments put up the same before the Home Minister. Home Government of India on 13.4.98. The Home Minister himself duly considered the case of the detenu and rejected the representation of the detenu on 24.4.98.'

23. On a close look, in our opinion, the aforesaid explanation is wholly insufficient to explain the long delay in the instant case. There is always a Government at the Union and this explanation cannot be accepted that as Minister of State for Home was not available. There is no explanation why the matter could not be placed before the then Minister of Home. When new Home Minister had assumed office, a fresh exercise is alleged to have started with regard to consideration of the representation which took about a month in deciding ' the representation. This by itself was an inordinate delay in case where the question of liberty was involved. In our opinion, the matter was not taken up with the required seriousness and the approach was casual. The delay of 95 and 115 days in deciding the representations of petitioners. In our opinion, rendered their further detention illegal and they are entitled for release immediately.

24. For the reasons stated above, the writ petitions are allowed. The inordinate and unexplained delay in disposing of the petitioners' representation by the Central Government rendered their further detention illegal. Therefore, we direct the respondents to release the petitioners forthwith if their detention in Jail is not required in any other case. There will be no order as to costs.